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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket No. FTA-2014-0019]**

### **Notice of Proposed Buy America Waiver for the Pad and Rubber Boot of a Concrete Block Used in New York City Transit South Ferry Station's Low Vibration Track System**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Buy America waiver.

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**SUMMARY:** The Federal Transit Administration (FTA) is waiving its Buy America requirements for the procurement by New York City Transit (NYCT), an agency of the Metropolitan Transportation Authority (MTA), of pads and rubber boots of a concrete block used in its Low Vibration Track (LVT) system on the basis of non-availability. The procurement for the pads and rubber boots are part of the South Ferry Station Project. This waiver is limited to this one procurement for the South Ferry Station Project, and conditioned upon the requirement that NYCT must complete the safety testing of U.S.-manufactured pads and rubber boots necessary to meet its specifications within the timeframe provided herein and substitute U.S.-manufactured pads and rubber boots for the foreign-made pads and rubber boots to the extent possible.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Attorney-Advisor, at (202) 366-0675 or [richard.wong@dot.gov](mailto:richard.wong@dot.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to announce that FTA is granting a non-availability waiver for the procurement of the pad and rubber boot of the concrete block used in NYCT's LVT system for the South Ferry Station Project.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) the manufacturing processes for the product take place in the United States; and (2) the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On March 21, 2014, FTA granted a waiver for the pad and the rubber boot to MTA Capital Construction Company, a construction management company for MTA expansion projects that is responsible for managing NYCT's Second Avenue Subway (SAS) Project. This waiver was limited to Phase 1 of the SAS Project and in granting the waiver FTA expressed its expectation that MTA would continue its good faith efforts to seek U.S. manufacturers of the pad and rubber boot. On April 29, 2014, FTA followed up with a letter and reiterated its expectations that MTA continue to seek U.S.-

manufactured pads and rubber boots and provided its findings on potential U.S. manufacturers.<sup>1</sup>

On July 14, 2014, NYCT requested another Buy America waiver for the pads and rubber boots to be procured for its South Ferry Station Project. Both NYCT and Construction Polymers Technologies, Inc. (CPT), the manufacturer of the concrete block for which the pad and rubber boots are components, have been conducting their own searches to find a U.S.-manufactured pad and rubber boot. On August 20, 2014, FTA confirmed that the U.S.-manufacturing processes of the pad and rubber boot that CPT had found meet the requirements of Buy America. However, NYCT asserts that safety testing of U.S.-manufactured pads and boots must be conducted before they can be used in NYCT's LVT system. NYCT represents that all of the necessary testing that it must undertake with respect to new and untested items such as the pad and the boot will take approximately three months after CPT conducts its own testing and provides its results to NYCT. FTA has been informed that CPT expects to produce its test results to NYCT on or about September 15, 2014.

Because of the timing of its contract award, which NYCT anticipates will occur by September 30, 2014, as well as the construction schedule, NYCT requested a waiver. If the waiver is not granted, NYCT asserts that there would be no Buy America compliant items that also meet its safety specifications, which cannot be waived.

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<sup>1</sup> FTA leveraged the resources of the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), through an interagency agreement currently in place, and had NIST conduct a supplier scouting resulting in a report completed by NIST of potential U.S.-manufacturers for the pad and rubber boot.

On August 20, 2014, FTA published a Federal Register notice requesting comment on NYCT's waiver request. 79 FR 49371. No comments were received to the docket.

Notwithstanding FTA's determination that the U.S.-made pad and rubber boot that CPT has found meets the Buy America requirements for manufactured components, because testing for the new pads and rubber boots must be performed that would cause delays to the South Ferry Station Project, FTA is hereby granting a non-availability waiver for the pad and rubber boot. The waiver is limited to a single procurement for the South Ferry Station Project and conditioned upon NYCT completing its testing of the U.S.-made pad and rubber boot within approximately three months of receipt of CPT's test results. NYCT must notify FTA's Regional Counsel for Region II in writing within five business days of receipt of CPT's test results, and within five business days of completion of its testing regarding the results of testing. Once all testing is completed and if the testing confirms that the U.S.-made pads and rubber boots meet NYCT's safety specifications, FTA expects NYCT to substitute the U.S.-made pads and rubber boots for the foreign-made items to the extent possible.

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